



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 24, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Capital City Cab Service, Inc.,
Docket No. C-2011-2201231

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Settlement Agreement being filed on behalf of the Commission's Bureau of Investigation and Enforcement in the above-captioned proceeding.

If you have further questions regarding this matter, please do not hesitate to contact me at (717) 787-5000.

Sincerely,

A handwritten signature in black ink that reads "R. K. Smith".

R. K. Smith
Prosecuting Attorney

Enclosures

cc: Per Certificate of Service

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2. On October 25, 1997, the Respondent obtained a certificate of public convenience at Docket No. A-00113875.

3. Pursuant to its enforcement responsibilities, on May 16, 2011 the Bureau of Transportation and Safety, now BI&E, initiated the above captioned complaint against the Respondent.

a. The BI&E complaint alleged that on September 24, 2010, Respondent charged a flat rate of \$15.00 for a trip from 4507 Devonshire Road, Harrisburg, to downtown Harrisburg. A meter must be in operation during the entire time the vehicle is engaged by a passenger. The driver of taxicab No. 42, Noredonne Chami, did not use the meter. Enforcement Officer Timothy Troxell met with Respondent and requested the dispatch records for taxicab No. 42 for September 24, 2010 but Respondent could not produce the log sheets. BI&E alleged further that Respondent violated 66 Pa. C.S. Section 1303 and 52 Pa. Code Section 29.314(b)(7), by not charging in accordance with its current tariff rates on file with the Commission and by not using a meter to charge a passenger the proper rate. BI&E further alleged that Respondent, by failing to maintain logs for at least two years, violated 52 Pa. Code Section 29.313(c). BI&E requested that the Commission assess a \$300.00 civil penalty for these violations.

II. Settlement Terms

4. The Respondent and BI&E, represented by Prosecuting Attorney R. K. Smith, Jr., intending to be legally bound, desire to conclude this litigation and agree to stipulate as to the following terms:

a. In recognition of the cost of further litigation, the time and expense of holding a hearing, and the merits of the parties' respective positions, the parties have entered into negotiations and have agreed to settle the complaint according to the terms and conditions set forth herein.

b. The Respondent agrees that it committed the violations detailed in the BTS complaint and agrees to pay a civil penalty of \$150.00.

c. The Respondent agrees to comply with the Public Utility Code and the Commission's regulations and orders in the future.

5. The Respondent and BI&E, believe that this Agreement is in the public interest, and therefore will request that the Commission approve this Settlement Agreement as in the public interest. This Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the Commission fails to approve this Agreement, by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Agreement by filing a response to the tentative or final order within fifteen (15) days of the date that the tentative or final order is entered. None of the provisions of this Agreement shall be considered binding upon the Parties if such a response is filed.

III. Statement in Support of Settlement

6. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004).

7. In *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000), the Commission adopted standards that are to be applied in determining the amount of civil penalties in slamming cases. The Commission subsequently determined that all violations of the Public Utility Code and Commission regulations shall be subject to review under the standards enunciated in *Rosi. Pa. P.U.C. v. NCIC Operator Services*, M-00001440 (December 21, 2000). BTS and Respondent submit that this Settlement Agreement complies with the requirements set forth in *Rosi* and that the terms of this Agreement are in the public interest.

8. The parties further assert that approval of this Settlement is consistent with the Commission's Policy Statement regarding factors and standards for evaluating litigated and settled proceedings at 52 Pa. Code § 69.1201.¹ Under this policy statement, while many of the same factors and standards may still be considered in both litigated and settled cases, the Commission specifically recognized that in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other

¹ This policy statement became effective upon publication in the Pennsylvania Bulletin on December 22, 2007, at 37 Pa. Bull. 6755.

matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

The ten factors of the Policy Statement, as applied to this case are as follows:

9. The first factor to be considered under the policy statement is whether Respondent’s actions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). The violations committed by the Respondent here should not be deemed willful fraud or misrepresentation.

10. The second factor to be considered under the policy statement is whether the resulting consequences of the Respondent’s actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Although the violation of not charging a metered rate should be deemed serious, the Respondent has assured the Commission that it will make sure that its drivers use meters at all times in the future. Furthermore, the Respondent will maintain driver logs for a period of at least two years.

11. The third factor to be considered under the policy statement is whether the Respondent’s conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* The Respondent’s conduct in this case should be deemed unintentional.

12. The fourth factor to be considered under the policy statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. As paragraph number ten of this Settlement Agreement recites, the Respondent will retain driver logs for at least two years and make sure its drivers always use meters in its taxicabs.

13. The fifth factor to be considered under the policy statement relates to the number of customers affected by the Respondent's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). One customer was affected by the Respondent's actions for one trip.

14. The sixth factor to be considered under the policy statement relates to the Respondent's compliance history. 52 Pa. Code § 69.1201(c)(6). The Respondent's compliance history has recently improved and should now be considered satisfactory.


15. The seventh factor to be considered under the policy statement relates to whether the Respondent cooperated with the Commission's investigation. The Respondent cooperated with the Commission's staff in this proceeding. Consistent civil penalties are a reliable method for bringing utilities into compliance with the Public Utility Code and Commission regulations. The primary purpose of a fine is to secure future compliance. The Law Bureau submits that the Respondent's payment of the agreed upon \$150.00 civil penalty constitutes a reasonable and appropriate resolution of the merits of this proceeding.

16. The ninth factor to be considered under the policy statement relates to past Commission decisions in similar matters. This Agreement is consistent with prior decisions because it is appropriate based upon the circumstances of this case.

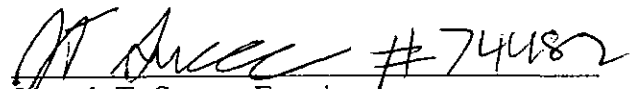
WHEREFORE, because the Agreement addresses and attempts to remedy all allegations raised in this matter, the Law Bureau, Bureau of Transportation and Safety and the Respondent request that the Commission adopt an order approving the terms of this Agreement as being in the public interest.

Date: 10/24/2011

Date: 10/17/11



Prosecuting Attorney R. K. Smith, Jr.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission



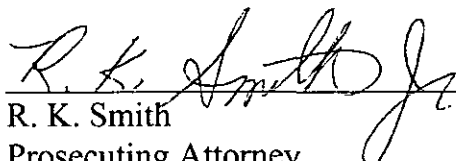
Joseph T. Sucec, Esquire #74482
Capital City Cab Service, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Joseph T. Sucec, Esquire
325 Peach Glen-Idaville Road
Gardners, PA 17324


R. K. Smith
Prosecuting Attorney
Attorney ID #14879

Pennsylvania Public Utility Commission
P.O. Box 3265
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DATE: October 24, 2011

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